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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190281
B-190058

DATE: March 24, 1978

MATTER OF: General Steamship Corp. Ltd; Carl Hartmann

DIGEST:

Payment to foreign-flag vessel does not contravene 46 U.S.C. 1241(a) even though American-flag vessel is available if transshipment used because GAO had State Department ship GAO employees' household goods and POV and State's regulations prohibit transshipment if direct service aboard foreign-flag vessel is available.

Carolyn May, an authorized certifying officer of the U.S. General Accounting Office (GAO), has requested an advance decision on the propriety of certifying two vouchers for payment. One voucher was presented for payment by General Steamship Corp. Ltd. (General Steamship), agents for Johnson Scanstar; the other was presented by Carl Hartmann, an international freight forwarder; both concern freight charges on two shipments made on behalf of GAO. The shipments were made between the continental United States and Europe for two of GAO's employees, Jeffrey L. Waldron, and James C. Malone, incident to their permanent change of station.

Ms. May, as an authorized certifying officer, is entitled to an advance decision by the Comptroller General on the question of law whether the freight charges should be certified for payment. 31 U.S.C. 82d (1970). And as required by our procedures, Ms. May has submitted the original voucher or bill presented for certification. 52 Comp. Gen. 83 (1972).

The Jeffrey L. Waldron Shipment

This shipment of household goods from the United States to Europe was handled for GAO by the State Department's Despatch Agent in San Francisco. The household goods were packed and crated by King Van and Storage, Inc., Long Beach, California, and booked by the Despatch Agency to the ship SS "FALSTRIA," a foreign

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flag ship of the Johnson Scanstar steamship company for transportation from the port of Los Angeles, California (Terminal Island) to Antwerp, Belgium, consigned to the State Department's European Logistical Support Office in Antwerp for further carriage to Frankfurt, Germany.

General Steamship has submitted a Standard Form No. 1113, Public Voucher For Transportation Charges, together with a commercial ocean bill of lading and a Justification Certificate For Use Of A Foreign Flag Vessel, signed by the Despatch Agent in San Francisco. The certificate states that it was necessary to use a foreign flag vessel because there is no existing American-flag steamer service between the ports of Terminal Island, California, and Antwerp, Belgium.

The James C. Malone Shipment

This shipment consisted of the employee's privately owned vehicle (POV) shipped from Frankfurt, Germany, to North Highlands, California, under Government bill of lading (GBL) K-4923844, issued by State Department officials on July 12, 1977.

Carl Hartmann, apparently an international freight forwarder, has submitted its invoice No. 13070 for \$701.65 covering all transportation charges. Attached to the GBL is an ocean bill of lading which shows that the POV was consigned to the U. S. Despatch Agent, San Francisco, California, and that it moved on the ocean vessel MS "FIGARO," a foreign-flag carrier of Wallenius Lines. Unlike the Waldron shipment, the bill is not supported by a justification certificate as required by our regulations. 4 C.F.R. 52.2(d) (1977).

The certifying officer has questioned the validity of paying the transportation charges because of information furnished by the staff of GAO's Logistics and Communications Division (LCD). LCD advised that American-flag ships are available between the ports involved in the two shipments by the use of transshipment or so-called "mini-bridge" service.

Section 901 of the Merchant Marine Act of 1936, 49 Stat. 2015, as amended, 46 U.S.C. 1241(a) (1970), requires, among other things, the use of American-flag ships for the transportation of the effects of Government employees when those ships are available unless the

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necessity of the employee's mission requires the use of a foreign-flag ship. The statute vests in the Comptroller General the final determination of necessity for use of a foreign-flag ship. 4 C.F.R. 52.2(c) (1977).

This Office in a recent memorandum to LCD, B-158097-O.M., October 17, 1977, discussed the use of transshipment and mini-bridge service as it relates to the shipment of Government employees' household goods. We defined transshipment as any change in the mode of transportation, e.g., rail to ship, or in the conveyance, ship to ship, or in fact, any change en route. Port Royal Marine Corporation v. United States, 378 F. Supp. 345 (S.D. Ga.; 1974), aff'd 420 U.S. 901 (1975).

Our earlier decisions in this area involved passenger travel and the transshipment of employees to ports to utilize American-flag vessels. 31 Comp. Gen. 351 (1952); 36 Comp. Gen. 53 (1956); 36 Comp. Gen. 207 (1956). In each of these decisions we said that a routing designed to utilize an American-flag vessel did not have to be used if it involved excessive extra cost and delay to the passengers involved. The decisions also established that use of American-flag vessels must be unreasonable before foreign-flag vessels could be considered available for direct service. We said that section 901 " * * * does not require an unreasonable procedure to be followed." 36 Comp. Gen. 53, 55 (1956). The cases involving passenger travel were later applied to cases involving shipments of household effects. And the same criteria of reasonableness, excessive cost, and delay, as determined by the facts involved in each case, also applied.

We note that both of the shipments were under the direction of the State Department or a division of the State Department, the United States Despatch Agency. And the State Department was no doubt relying on certain standards in the Foreign Service Travel Regulations. The standards are based on prior decisions of this Office. See B-106864, March 15, 1962; April 4, 1977. And Section 166.26 of Volume 6 of the Foreign Affairs Manual provides:

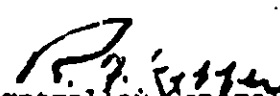
"When American ships do not operate directly between a port serving the place where transportation of effects originates and the port serving the actual destination, and foreign ships do so operate, shipment of effects shall be made on a foreign ship."

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In that section "direct" is defined as "without transshipment en-route." Another standard states that: "When the origin or destination is a seaport, it is not necessary to send the shipment to another port in order to utilize an American ship." Thus, the regulations in effect prohibit the use of transshipment to utilize American-flag vessels if direct service aboard a foreign-flag vessel is available.

The voucher for the Waldron shipment was accompanied by a certificate of unavailability as required by our regulations and our Office will take exception to an administrative certificate issued in accordance with regulations, on an individual basis, only where there is evidence that the required certification should not have been issued. 39 Comp. Gen. 561 (1960); 33 Comp. Gen. 283 (1953). We do not feel that this is the case here. And we were advised by the Maritime Administration that American-flag vessels were not available on or about the appropriate date of movement to handle the Malone POV shipment direct from Bremerhaven to San Francisco; they were available only through the use of transshipment.

The two vouchers which are returned with this decision may be certified for payment, if otherwise correct.


Deputy Comptroller General
of the United States